

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

STATE OF TEXAS, TEXAS GENERAL
LAND OFFICE, TEXAS DEPARTMENT
OF AGRICULTURE, RAILROAD
COMMISSION OF TEXAS,

and STATE OF KANSAS,

and STATE OF OKLAHOMA,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR,
U.S. FISH AND WILDLIFE SERVICE,
DEBRA HAALAND, in her official capacity as
SECRETARY OF THE INTERIOR,
MARTHA WILLIAMS, in her official capacity
as DIRECTOR OF THE U.S. FISH AND
WILDLIFE SERVICE,

Defendants.

Civil Action No. 7:23-cv-47

DECLARATION OF JAMES JAY TUTCHTON

I, James Jay Tutchton, make the following declaration:

1. I am a resident of Hasty, Colorado. I live on a nature preserve, established by the Southern Plains Land Trust (SPLT), about 34 road miles southwest of Lamar, Colorado in Bent County.
2. I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
3. I am the Preserve Manager and Acting Executive Director for SPLT. I have been involved with SPLT in varying capacities (counsel, volunteer, board member, and now employee) nearly since its founding in 1998. I have been a full-time employee since 2017.

4. I am also a member of the Center for Biological Diversity (Center) and have been a member of the Center nearly since its founding. As a member, I rely on the Center to represent my interests in conserving native species and their habitats. I support its efforts to secure a future for all species, including the Lesser Prairie Chicken, and to prevent development, pollution, and climate change from driving species extinct.

5. I hold a bachelor's degree from the University of Notre Dame, and a law degree from the University of California at Los Angeles (UCLA). I practiced law for approximately 27 years, primarily litigating for the enforcement of federal environmental laws, including the Endangered Species Act (ESA). On numerous occasions I represented the Center in litigation and at times I was employed by the Center as a staff attorney.

6. In the early 1990s, I hunted Lesser Prairie Chickens on the Cimarron National Grassland and on private land near Elkhart, Kansas. At that time, this area held one of the last "hunnable" populations of Lesser Prairie Chickens. Subsequently, in approximately 1995, I became acquainted with a woman named Marie Ellen Morrissey and a man named Jasper Carlton. Ms. Morrissey and Mr. Carlton worked for the Biodiversity Legal Foundation and had recently written an ESA listing petition for the Lesser Prairie Chicken. They explained to me the serious population decline experienced by the species and I decided to stop hunting it. I also became active in legal efforts to help conserve Lesser Prairie Chickens, representing Ms. Morrissey and the Biodiversity Legal Foundation in litigation to force the U.S. Fish and Wildlife Service to respond to their ESA listing petition. Having read and studied a great deal about Lesser Prairie Chickens through my representation of Ms. Morrissey and the Biodiversity Legal Foundation, I became enamored with species and determined to advocate for its survival. I also began to enjoy viewing it in the wild without trying to kill it as I had done previously.

7. In the late 1990s and early 2000s I used to view Lesser Prairie Chickens at a lek near Campo, Colorado on the Comanche National Grasslands. In the mid-to-late 2000s, the population at this

lek near Campo collapsed and the lek was closed to public viewing. When the Campo lek was closed, I began to go view Lesser Prairie Chickens on a lek on the Cimarron National Grasslands near Elkhart, Kansas.

8. More recently, in 2022, I became friends with our local Colorado Parks and Wildlife (CPW) biologist in Lamar, Colorado. He informed me I did not have to drive over to Kansas to continue observing Lesser Prairie Chickens in the wild. Together we went to view the best remaining population of Lesser Prairie Chickens in Colorado. This lek is on private land northeast to the Two Buttes State Wildlife Area, near to where I live. I plan to visit this lek again in April or May 2024. On the day of my last visit fewer than 20 males attended the lek.

9. It is a bittersweet experience to view the remaining Lesser Prairie Chickens in Colorado as the population is very close to extirpation from the State. I believe that legal protection under the federal ESA is the best remaining option to ensure the survival of this bird. Since the mid-1990s when the Biodiversity Legal Foundation first petitioned to list the species under the federal ESA all State and private efforts to conserve the species, at least in southeastern Colorado, have largely failed. It is time to try federal protection under the ESA as a supplement to these State and private efforts.


10. The organization for which I work, SPLT, is also keenly interested in the survival of the Lesser Prairie Chicken. SPLT owns approximately 50,000 acres in Bent and Baca Counties, Colorado. All of these lands are within the historic range of the Lesser Prairie Chicken as I understand it. At present, SPLT is unaware that any Lesser Prairie Chickens reside on its property. However, SPLT would welcome Lesser Prairie Chickens to inhabit any of its lands, either via natural recolonization or human-aided reintroduction. SPLT has been pursuing an acquisition of land in Colorado or Kansas that is currently inhabited by Lesser Prairie Chickens, but to date has been unable to complete such a purchase.

11. I would be injured by the loss of federal Endangered Species Act protections for the lesser prairie-chicken because I believe these legal protections and consequent legally required federal actions

to conserve the species are the best hope to save the Lesser Prairie Chicken. Without such actions and legal status, I believe the bird will slide closer to extinction and will likely be extirpated from Colorado.

12. Through my work at SPLT I am aware of numerous transmission line, wind farm and solar farm development projects proposed for southeastern Colorado. I believe if all these projects are constructed without adequate protections or mitigation for the Lesser Prairie Chicken the species will be extirpated from this area. I further believe that federal ESA protection would require these projects to proceed only with adequate safeguards to ensure the Lesser Prairie Chicken's survival. Without such legal protections there will be fewer, perhaps no, Lesser Prairie Chickens in this area and that will harm or destroy my interests in viewing the species in the wild and reduce my quality of life.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of May 2023, in Hasty, Colorado.



James Jay Tutchton